No. 86-909

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RUSSELL JACKSON, *et al.*, individually and on behalf of all other holders of 5% Hukuang Railway Bearer Bonds issued by the Imperial Chinese Government in 1911, similarly situated,

Petitioners,

v.

THE PEOPLE'S REPUBLIC OF CHINA, a foreign government,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit correctly determined that the rules of restrictive foreign sovereign immunity codified in the Foreign Sovereign Immunities Act of 1976 do not apply retroactively so as to confer subject matter jurisdiction over foreign sovereign states in lawsuits based on transactions occurring when absolute sovereign immunity was the applicable rule of U.S. law, and decades before the United States altered its practice by adopting principles of restrictive foreign sovereign immunity?

2. Whether the Eleventh Circuit correctly found no abuse of discretion where a U.S. district court vacated a judgment by default against a foreign sovereign state when the foreign sovereign state reasonably relied on its position that international law does not require it to appear, the foreign sovereign state had numerous meritorious defenses, important foreign policy interests were served by permitting the foreign sovereign state to present its views to the district court, and plaintiffs would not be irreparably prejudiced if the default judgment were to be vacated?

PARTIES BELOW

Parties in the United States Court of Appeals were appellants, Russell Jackson, et al., individually and on behalf of all other holders of 5% Hukuang Railway Bearer Bonds issued by the Imperial Chinese Government in 1911, similarly situated; and appellee, The People's Republic of China, a foreign government.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Authorities Continued

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RESPONDENT'S BRIEF IN OPPOSITION

The People's Republic of China, named as respondent herein, respectfully advises this Court that, as a sovereign state, it stands on the principle of absolute sovereign immunity as a fundamental aspect of its sovereignty, and maintains its right under international law to absolute immunity from suit in the courts of foreign jurisdictions without its consent; China therefore requests that this Court deny the

petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit, reported at 794 F. 2d 1490, is printed as Appendix A to the petition.* The unreported opinion of the United States District Court for the Northern District of Alabama is printed as Appendix F to the petition, and the subsequent opinion of the United States District Court for the Northern District of Alabama, reported at 596 F. Supp 386, is printed as Appendix G to the petition.

STATUTORY PROVISIONS

The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1332(a)(2), 1331(g), 1441(d), 1602-1611, the partial text of which appears as Appendix H to the petition.

STATEMENT OF THE CASE

In the year 1911, at the behest of four Western powers the weak and corrupt Qing[1] Dynasty, the gov-

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* References to the Appendix to the Petition for Certiorari are designated herein as Pet. App. at A-___.

[1] *Pinyin* transliterations are used in this brief, except in quotations, where the original transliterations are retained. Besides *pinyin*, there are also the Wade-Giles and Yale transliteration systems. The *pinyin* "Qing" is, in the Wade-Giles transliteration, "Ch'ing"; and, in Yale, "Ching." "Hukuang" is a Wade-Giles transliteration (*pinyin* "Huguang") and is spelled "Hukuang" throughout this brief, to conform to the spelling used in the district and appeals courts' opinions.

ernment of China at that time, was forced to sell certain bearer bonds, known as "Hukuang Railway Bonds." These bonds were to be amortized over a period of years, with the final payment of principal to fall due in 1951. One-quarter of the Hukuang Railway Bonds were offered for sale in the United States; the remaining three-quarters were offered for sale in Germany, France and Great Britain. The proceeds from the sale of the Hukuang Bonds were supposed to be used to construct certain sections of railway track in China.

The Hukuang Loan is a notorious event in Chinese history, comparable in significance to the stamp tax levied on the American colonies, which provoked the Boston Tea Party.[2] Popular opposition to the Hu-

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[2] The circumstances of the Hukuang Loan are described in the standard U.S. university textbook on modern China as follows:

"Provincial conflict with the central power came to a head over railway-building. China's late nineteenth-century policy of avoiding foreign-financed and foreign-run railways had been smashed in the scramble of 1898. Foreign-controlled lines—Russian and Japanese in Manchuria, German in Shantung, and French in Hunan—had now become tools of economic imperialism, preliminary to opening mines, extracting resources, and exploiting markets. Other lines, though nominally owned by the Ch'ing government, had been financed under contract by foreign banking syndicates, which commonly floated bond issues to raise funds as foreign loans to the Chinese government. They then built the lines and managed them as trustees for the foreign bondholders, holding a first mortgage on the railway as security for the original loan and so remaining mortgagees in possession. China was thus entering the railway age with foreign financiers awaiting the profits.

"Consequently a patriotic 'rights recovery' movement became active in most provinces, where local groups demanded re-

kuang Loan kindled an uprising which contributed to the overthrow of the Qing Dynasty in the same year, in October, 1911.

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demption of the foreign lines and formed companies to build Chinese provincial lines.

* * *

"Since railroad loans had become a chief tool of imperialist encroachment, the United States now became quixotically involved under the Taft administration in defending the Open Door through the contradictory method of 'dollar diplomacy.' Secretary of State Philander C. Knox made a vague proposal in November 1909 for 'neutralization' of the railways in Manchuria. This, however, ran counter to the British policy after 1907 of acquiescing in the Russo-Japanese expansion in Manchuria. Knox's ill-conceived proposal only stimulated Japan and Russia to reaffirm secretly in 1910 their division of spheres in the Northeast. Meanwhile, in July 1909 President Taft had intervened in the Hukuang railway loan negotiations with a personal telegram to the regent at Peking, demanding 'equal participation by American capital' so that it could promote 'the welfare of China and . . . her territorial integrity.' This got the Morgan group of banks included in a four-power (French, British, German, American) banking consortium set up in 1910.

"The final contract [the Hukuang contract] of the consortium, signed with [the corrupt Qing official] Sheng [Hsuan Huai] in May 1911, coincided with an imperial decree, which Sheng had advocated, to nationalize, buy out, and put under Peking's control all provincial railway projects. This rebuff to provincial interests threw the fat in the fire. To patriots in the provinces it seems that the Manchus and their corrupt henchmen were selling China to foreign bankers for their own profit. A 'railway protection' movement sprang up, particularly in Szechwan, with mass meetings and anguished petitions to Peking, all in vain. The Szechwan movement intensified. Shops and schools were closed. Tax payments were stopped. Peasant support was mobilized. In September the government moved troops, shot down demonstrators, and seized the gentry leaders. Typically, these

Sixty-eight years after the 1911 issue date of the Hukuang Bonds, in November, 1979, petitioners filed this lawsuit for payment on the bonds. Suit was brought in the United States District Court for the Northern District of Alabama against the Government of the People's Republic of China under the Foreign Sovereign Immunities Act of 1976 ("the FSIA"). The Government of China did not appear. China holds that, as a sovereign state, it is entitled to absolute immunity from suit in the courts of other states as a matter of international law, and that the Hukuang Loan is an odious debt for repayment of which the People's Republic of China is not responsible. Petitioners requested and obtained a judgment by default from the district court. The district court set damages at $41.3 million.

The Government of China made its position on this "Hukuang Railway Bonds Case" clear when Secretary of State George P. Shultz met personally with Deng Xiaoping, Chairman of the Advisory Council of the Central Committee of the Chinese Communist Party, in Beijing in February 1983. In a declaration submitted as part of a Statement of Interest of the United States to the district court in Alabama, Secretary Shultz described that meeting:

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men were degree-holders of means, with landlord-merchant backgrounds, who had studied in Japan, were now prominent in the provincial assembly, and had invested heavily in railway projects. Their antiforeign slogan 'Szechwan for the Szechwanese' represented the interest of the provincial ruling class, which had now become violently antidynastic."

J. Fairbank, E. Reischauer & A. Craig, *East Asia: The Modern Transformation* 629-30 (1965). *See also* O. Edmund Clubb, *Twentieth Century China* 39-40 (2d ed. 1972).

In my February visit to Beijing, I and other senior U.S. officials discussed matters of state with PRC [People's Republic of China] leaders. In the course of the meetings, Chairman Deng Xiaoping personally expressed to me the PRC Government's serious concern about the default judgment in these proceedings and his apprehension that that judgment was and would continue to be a major irritant in bilateral relations. Chairman Deng vigorously stated his government's view that the PRC enjoys absolute immunity from the processes of the United States or other foreign courts and that the PRC Government is not responsible for the particular debt at issue here of a predecessor Chinese government. Chairman Deng indicated that the PRC regarded the Huguang bonds as particularly objectionable because the PRC believes that the foreign powers forced those bonds on a corrupt Imperial Government and because the issuance of the bonds was one of the events that gave rise to the Chinese Revolution of 1911.

Secretary of State Shultz continued:

The present proceedings . . . have become a significant issue in bilateral United States/China relations, as evidenced by Chairman Deng's personal representations to me in February in Beijing, by China's representations to other Department officials throughout the duration of this lawsuit, and by the repeated diplomatic notes from the PRC that have been filed in these proceedings. The

> manner in which these proceedings are finally resolved can be expected, therefore, to have ramifications for other important United States interests with respect to China.

Following this and other Government-to-Government discussions, China agreed to make a special appearance for the purpose of presenting its defenses directly to the Judicial Branch of the United States Government, through the district court in Alabama. Accordingly, the Government of China filed motions to vacate the judgment by default and to dismiss the case. The U.S. Government, in supporting Statements of Interest, urged the district court to set aside the judgment by default, and set forth the position of the United States that the restrictive foreign sovereign immunity provisions of the FSIA were not intended to apply to transactions predating 1952, such as the Hukuang Loan transaction.

The district court vacated the judgment by default pursuant to Fed. R. Civ. P. 60(b)(6) and then dismissed the complaint on grounds of China's absolute sovereign immunity in the case, inasmuch as the principles of restrictive foreign sovereign immunity set forth in the FSIA were not intended to apply to transactions predating 1952.

In the ensuing appeal, the Government of China filed a brief setting forth the reasons why the district court's judgment should be affirmed. The United States filed a Statement of Interest urging affirmance of the district court's action and argued the appeal before the appeals court panel of Chief Judge Godbold, Senior Circuit Judge Tuttle and Circuit Judge Johnson. The panel unanimously affirmed the vacat-

ing of the judgment by default and dismissal of the case on the grounds articulated by the district court.

REASONS FOR DENYING THE WRIT

I. The decision of the appeals court is clearly correct.

The Eleventh Circuit's opinion details the considerations which motivated the district court to vacate its earlier default judgment. Those considerations make it clear why the appeals court held that the district court did not abuse its discretion in vacating the default judgment under Fed. R. Civ. P. 60(b)(6), and why it "reject[ed] out of hand the contention that in seeking an adjudication of jurisdictional issues arising out of United States domestic law China act[ed] improperly in reserving what it conceives are its rights under international law." Pet. App. at A-12. The considerations included China's reasonable reliance on its position that international law does not require it to appear, the important U.S. foreign policy interests served by permitting China to present its views to the district court, the general judicial presumption that resolution on the merits is preferable to default (which, if anything, is stronger in cases involving foreign sovereign defendants), the existence of several meritorious defenses,[3] and the lack of irreparable prej-

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[3] Besides the nonretroactivity of the foreign sovereign immunity principles codified in the FSIA, on the basis of which the case was dismissed, the defenses included, among others, lack of sufficient contacts with the United States with respect to all or most of the Hukuang Bonds, (three-quarters of the bonds were issued overseas), running of the statute of limitations (the Alabama statute on sealed instruments, Ala. Code §6-2-33 (1) (1975), provides for a ten-year period, and no payments have been made on the bonds since at least 1938), ineffectiveness of service, and the noncommercial nature of the bonds.

udice to plaintiffs if the default judgment were to be set aside. Given these considerations, the appeals court's holding that the district court did not abuse its discretion in vacating the default judgment under Fed. R. Civ. P. 60(b)(6) is clearly correct.

The appeals court also was correct in holding that China was entitled to immunity from suit on the grounds that the FSIA was not intended to alter the substantive rules of immunity so as to destroy the immunity that China reasonably expected when the Hukuang Loan was made in 1911.[4] From at least 1812, when Chief Justice Marshall rendered the Court's decision in *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116 (1812), until 1952, the United States followed the "absolute" theory of immunity, under which foreign sovereigns were absolutely immune from suit. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983) ("[f]or more than a century and a half, the United States generally granted foreign sovereigns complete immunity from suit in the courts of this country"). Thus, in 1911 (and in 1937),[5] the United States adhered to the principle of absolute foreign sovereign immunity.

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[4] "The Act [the FSIA] codifies the standards governing foreign sovereign immunity as an aspect of substantive federal law." *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 497 (1983).

[5] At the hearing to set damages under the default judgment, plaintiffs offered one witness, a member of the plaintiff class who testified that, in 1937, the successor government, the Republic of China, had offered to renegotiate the terms of the Hukuang Bonds, but no bondholder, so far as he knew, had accepted the offer. On the basis of there having been no renegotiation, the district court set damages at $41.3 million. Sub-

Executive Branch action altered United States practice on foreign sovereign immunity in 1952 with the publication of a letter by Jack B. Tate, Acting Legal Advisor of the Department of State. The "Tate Letter," 26 Dep't St. Bull. 984 (1952), *reprinted in Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 711 (1976), adopted the "restrictive" theory of sovereign immunity, under which foreign sovereigns would continue to be immune from suit with regard to their sovereign or public acts (*actiones jure imperii*) but would not be immune with regard to their commercial acts (*actiones jure gestionis*).

In 1976 Congress codified the Tate Letter practice of restrictive foreign sovereign immunity by enacting the FSIA.[6] Neither the FSIA itself nor its legislative history purports to extend the change in the substantive rules of immunity back to lawsuits based on transactions as remote in time as 1911 (or 1937). "Nothing in [the FSIA's] language or legislative history indicates that . . . wholesale reactivation of ancient claims was intended". *Schmidt v. Polish People's Republic*, 742 F.2d 67, 71 (2d Cir. 1984). The appeals

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sequently, plaintiffs sought to retract this testimony by claiming that there had in fact been a renegotiation of the Hukuang Bonds in 1937, and they now claim that 1937, not 1911, is the operative date. However, whether there was or was not such a renegotiation is totally immaterial to the holding of the appeals court, since 1937 is still many years before the United States abandoned the principle of absolute foreign sovereign immunity.

[6] The FSIA also transferred foreign sovereign immunity determinations from the Executive Branch to the Judicial Branch, and extended the restrictive theory to the rules of immunity from execution. *See* von Mehren, *The Foreign Sovereign Immunities Act of 1976*, 17 Colum. J. Transnat'l L. 33, 42, 45 (1978).

court properly found that the FSIA was intended to codify Tate Letter practice, and consequently, the FSIA's rules of restrictive foreign sovereign immunity do not extend back to transactions occurring long before the 1952 Tate Letter, when absolute foreign sovereign immunity was the applicable rule of law in the United States. Finding no indication that Congress had intended for the rules of restrictive foreign sovereign immunity to be applied retroactively, the appeals court applied the strong and uncontroversial presumption against the retroactive application of statutes, a presumption which is not overcome absent the unequivocal expression of the legislature that a given statute be applied retroactively.[7] *See, e.g., United States v. Security Industrial Bank*, 459 U.S. 70, 79-80 (1982), *quoting United States Fidelity & Guaranty Co. v. United States ex rel. Struthers Wells Co.*, 209 U.S. 306, 314 (1908); *Greene v. United States*, 376 U.S. 149, 160 (1964). That presumption is, if anything, stronger in the context of statutes concerning foreign sovereign immunity.[8] As this Court observed

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[7] In fact, far from containing an unequivocal expression that it should be applied retroactively, the FSIA contains a ninety-day notice provision, 28 U.S.C. § 1602 note, which, the House Report states, was "deemed necessary to give adequate notice of the act and its provisions to all foreign states." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 33, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6604, 6632.

[8] Furthermore, China could not have reasonably anticipated being haled into a United States court, nor could the purchasers of the Hukuang Bonds reasonably have expected that they would have the right to bring an action against China in a United States court in the event of a default. *Cf. World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, (1980) (exercise of jurisdiction incompatible with due process when defendants could

in *Berizzi Bros. v. Steam Ship Pesaro*, 271 U.S. 562, at 571 (1926) "[a] nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and perceived obligations of the civilized world." In addition, retroactive application of changes in municipal laws affecting the jurisdictional immunity of foreign sovereign states would violate established norms of international law. *See generally Island of Palmas Case (Neth. v. U.S.)*, 2 R. Int'l Arb. Awards 829 (1928).

II. This case would have little, if any, prospective effect.

This case would have little, if any prospective effect, for the following reasons:

(A) There are likely to be very few cases based on ancient claims such as the one in this case, and such cases would in any event be time-barred by applicable statutes of limitations. *See Schmidt v. Polish People's Republic*, 742 F.2d 67 (2d Cir. 1984) (dismissal on statute of limitations grounds affirmed).[9]

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not "reasonably anticipate being haled into court" in that place; the legal system must be sufficiently predictable to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit"). The Eleventh Circuit's construction of the FSIA thus avoided serious constitutional difficulties.

[9] "The Court notes that the FSIA was not enacted until 24 years after the restrictive theory was adopted in 1952. Thus, there was no reason for Congress to consider the question of retroactivity since presumably causes of action more than 24 years old would be barred by the statute of limitations." *Slade v. United Mexican States*, Civil Action No. 84-1343 (D.D.C. July

(B) Sovereign debt instruments routinely contain clauses irrevocably waiving any entitlement the debtor may have to a claim of foreign sovereign immunity in respect of proceedings arising from a default.[10] Thus, this case has no bearing on sovereign loans and bond issues in the modern era.[11]

8, 1985) (LEXIS, Genfed library, Dist file), *aff'd*, No. 85-5986 (D.C. Cir. May 27, 1986) (LEXIS, Genfed library, Usapp file).

[10] In fact, the House Judiciary Committee decided not to include in the FSIA a provision contained in earlier bills relating to public debt obligations, since, "[i]n practice, the provision would have virtually no effect because U.S. underwriters of foreign government bonds and U.S. banks lending to foreign governments would invariably include an express waiver of immunity in the debt instrument." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 10, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6604, 6609.

[11] In their Questions Presented, petitioners seek to have the Court decide whether the FSIA applies to obligations of foreign sovereigns incurred *after* 1952, but that question is not presented by the facts of this case. Petitioners also frame their Questions Presented in terms of whether a foreign sovereign may claim immunity from obligations to "citizens of the United States." The class in this case was not defined in terms of "citizens of the United States" at all; instead, the class is defined as "all persons" who were holders of Hukuang Bonds on October 22, 1982. Moreover, the FSIA's jurisdictional provisions are not defined in terms of U.S. citizenship of plaintiffs, but in terms of the contacts of a given activity with the United States. As indicated above, three-quarters of the Hukuang Bonds were offered for sale in England, France and Germany, and did not have the requisite contacts with the United States under the FSIA, even had the rules of restrictive sovereign immunity codified in the FSIA applied to bonds issued in 1911. Petitioners further seek review of the question whether a district court can dismiss a case without permitting discovery where the dismissal is based on a factual issue. That question is also not presented here, because the district court's dismissal of the case was based

(C) With respect to transactions with China generally, commercial transactions nowadays are concluded by the state enterprises of the People's Republic of China, not by the Government of China itself. China does not claim that its state commercial enterprises are entitled, as a matter of international law, to immunity from suit in respect of their commercial transactions. Therefore, this case has no bearing on any claims that may hereafter arise in respect of such transactions.[12]

III. The decision of the court of appeals does not conflict with any other appeals court decision or with decisions of this Court.

Petitioners have not cited a single appeals court decision in which jurisdiction has been exercised by a U.S. court over a foreign sovereign defendant in a lawsuit based on a transaction occurring before 1952. The circuits, in fact, are in agreement on the nonretroactive application of the rules of restrictive foreign sovereign immunity codified in the FSIA to transactions predating 1952. The reasoning of the in-

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on the sole legal, non-factual ground that the FSIA does not apply to transactions such as these, which long predate 1952.

[12] Moreover, most of the commercial contracts concluded with Chinese enterprises provide for arbitration in the event of dispute, and thus impliedly waive sovereign immunity. *See also* Agreement on Trade Relations Between the United States of America and the People's Republic of China, July 7, 1979, art. III, 31 U.S.T. Pt. 6, 4651, 4655, T.I.A.S. No. 9630, *reprinted in* 18 *Int'l Legal Materials*, 1041 (1979), under which the United States and China encourage the resolution of commercial disputes between their respective nationals by arbitration. Many China investment contracts also contain explicit waivers of sovereign immunity.

stant case was applied in *Slade v. United Mexican States*, Civil Action No. 84-1343 (D.D.C. July 8, 1985) (LEXIS, Genfed library, Dist file), *aff'd*, No. 85-5986 (D.C. Cir. May 27, 1986) (LEXIS, Genfed library, Usapp file), in which a district court held that the FSIA's restrictive sovereign immunity rules would not apply in a suit based on events occurring in 1941.[13] The appeals court affirmed the district court on the same grounds, that "the Foreign Sovereign Immunities Act does not apply retroactively to cover the transactions at issue."[14] The Court of Appeals for the Second Circuit has held that the FSIA cannot be construed to confer subject matter jurisdiction retroactively. *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 629 F.2d 786 (2d Cir. 1980), *cert. denied sub nom. Corporacion Venezolana de Fomento v. Merban Corp.*, 499 U.S. 1080 (1981). The Court of Appeals for the Ninth Circuit also has observed that the FSIA's restrictive foreign sovereign immunity principles may not apply retroactively. *See Insurance Company of North America v. Marina Salina Cruz*, 649 F.2d 1266, 1272 (9th Cir. 1982) (in actions claimed to arise under the FSIA, it must be determined "whether [the FSIA] gives such clear notice to foreign

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[13] Pursuant to Local Rule 8(f) of the U.S. Court of Appeals for the D.C. Circuit, this case is not being cited as precedent, but merely to illustrate that there is no *contrary* precedent in the D.C. Circuit.

[14] Also, in *Lary v. Republic of China* [so-called], Civ. No. 83-C-5461-NE (N.D. Ala. Aug. 30, 1985), *aff'd*, 800 F.2d 265 (1986), *petition for cert. filed* Jan. 24, 1987 (No. 86-1219), one of the class members in this case, *Jackson*, brought suit against the so-called Republic of China on Taiwan for payment on the Hukuang Bonds. The district court dismissed *Lary* on the same grounds that it dismissed *Jackson*.

countries as to remove, as a reasonableness factor, the expectations of immunity of agencies of foreign countries performing commercial functions").

Petitioners have not cited a single case in which a court asserted jurisdiction over a foreign state after it was brought to the court's attention that the relevant transactions occurred when absolute foreign sovereign immunity was the rule of U.S. law. Furthermore, cases cited by plaintiffs as standing for the retroactive application of the restrictive principles of foreign sovereign immunity are inapposite. *Verlinden, B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983), does not concern transactions predating 1952. In *Von Dardel v. Union of Soviet Socialist Republics*, 623 F. Supp. 246 (D.D.C. 1985), a case based on very different facts, a district court found jurisdiction based on a tort continuing to this day. In *Schmidt v. Polish People's Republic*, 742 F.2d 67 (2d Cir. 1984), the appeals court affirmed dismissal on simple statute of limitations grounds, since a timebar would make the action impossible under *any* theory of subject matter jurisdiction. And, in *Asociacion de Reclamantes v. United Mexican States*, 735 F.2d 1517 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1051 (1985), subject matter jurisdiction was found lacking even if the restrictive principles of the FSIA were to apply.

Furthermore, contrary to the claims of petitioners, the Eleventh Circuit's decision does not conflict with the decisions of this Court. Petitioners produce the unwarranted conclusion that there are conflicting decisions from the premise that the Eleventh Circuit held "that the United States could not thereafter change [the law regarding foreign sovereign immunity] as to this bond issue by the subsequent enact-

ment of a statute." Pet. at 8. The appeals court did not, however, hold that the United States *could not* change the law of foreign sovereign immunity by the enactment of a statute; the appeals court held that the statute which was *in fact enacted*, the FSIA, *did not* change the law of foreign sovereign immunity as to transactions predating 1952, the date of issuance of the Tate Letter by the United States Department of State. For reasons explained above, this holding is clearly correct, and does not require resolution of the different question which petitioners attempt to read into the case.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

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